PUBLIC PROSECUTOR

v.

CHEAH BOON TAT

HIGH COURT MALAYA, ALOR SETAR
TUAN K.N. SEGARA JC
[CRIMINAL TRIAL NO. 45-9-94]
28 MAY 1995

CRIMINAL PROCEDURE: *Criminal Procedure Code (Amendment) Act 1995 - Repeal of trial by jury - Accused charged before Amendment Act came into force - Accused committed to High Court for trial - Date fixed for trial after Amendment Act came into force - Whether accused has substantive right to trial by jury - Whether Act retrospective in nature.*

The accused was charged by the Magistrate for an offence under s. 302 Penal Code read together with s. 34 of the Code. The charge was read, explained and the accused then elected to reserve his defence. He was then committed for trial before the High Court and the trial dates were fixed between 24 May 1995 to 15 June 1995. However, before the accused appeared or was brought before the High Court, the Criminal Procedure Code (Amendment) Act, 1995 came into force with effect from 17 February 1995 and consequently s. 200, which provided for trials by jury, was repealed. When the High Court sat for the trial as scheduled, it was without a jury and Counsel for the accused raised a preliminary objection that the accused was entitled to a "trial by jury" notwithstanding the coming into operation of the Amendment Act. It was contended by the Counsel for the accused that the accused has a substantive right to be tried by a jury since the accused was committed to stand trial at the High Court well before the Amendment Act came into force. It was further contended that there was an ambiguity in s. 39 of the Amendment Act and the "purposive" approach of interpretation should be applied.

Held:

[1] The accused will have such a right if his case has in fact commenced, or anything had been done, which could be legally interpreted as amounting to a commencement of his trial in the High Court, before the coming into force of the Amendment Act. The trial of the accused in the High Court does not commence with the order of commitment but when the evidence is adduced in the High Court. In this case, the accused appeared for the first time in the High Court on 25 May 1995, well after the coming into force of the Amendment Act. Therefore the accused did not have a substantive right to be tried by a jury before the coming into force of the Amendment Act.

[2] Unless provided expressly or by necessary implication, no statute is retrospective in its operation, but a statute which affects procedure only, is retrospective. The Amendment Act, in so far as the accused is concerned, only affects procedure relating to the trial in the High Court. The accused did not have any vested right to a trial by jury prior to the coming into force of the Act. Therefore, the Amendment Act can be made to operate retrospectively and the accused will not suffer from any injustice or unfairness.

[3] The intention of the Parliament in enacting the Amendment Act is very clear, that is, any preliminary inquiry, any trial by jury and any trial with the aid of assessors should be abolished with effect from the date the Amendment Act came into force. Nevertheless, s. 39

was obviously enacted to ensure that any vested substantive right to a preliminary inquiry, a trial by jury and a trial with the aid of assessors enjoyed by any person before the coming into force of the Amendment Act would not be affected.

[Preliminary objection dismissed].

United Hokkien Cemetries, Penang v. MPPP [1979] 2 MLJ ***(refd)***
Navaradnam v. Suppiah Chettiar [1973] 1 MLJ 173 ***(refd)***
Public Prosecutor v. Datuk Haji Harun bin Haji Idris [1977] 1 MLJ 14 ***(refd)***
Dart Sum Timber (Pte) Ltd. v. Bank of Canton [1982] 2 MLJ 101 ***(refd)***
Teo Cheng Leong v. PP [1970] 2 MLJ 275 ***(refd)***
Lim Moh Joo v. PP [1970] 2 MLJ 113 ***(refd)***
Sim Seoh Beng & Anor. v. Koperasi Tunas Muda Sungai Ara Berhad [1995] 1 MLJ 292 ***(refd)***
Leaw Mei Lee v. AG & Ors. [1967] 2 MLJ 62 ***(refd)***
Datuk Haji Harun bin Haji Idris v. PP [1977] 2 MLJ 155 ***(refd)***
Teng Lang Khin v. PP [1995] 1 SLR 372 ***(refd)***
Tan Sung Mooi v. Too Miew Kim [1994] 3 MLJ 117 ***(refd)***
Jayasankaran v. PP [1983] 1 MLJ 379 ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 3, 9(b), 142(1), 143, 147,(1), 200, 252
Criminal Procedure Code (Amendment) Act 1995, s. 39, (1), (2)
Penal Code, ss. 34, 302

For the accused - Karpal Singh (Jagdeep Singh with him); M/s. Karpal Singh & Co.
For the public prosecutor - Abdul Razak bin Musa (Selvanathan & with him); DPP

JUDGMENT

K.N. Segara JC:

Section 3 of the Criminal Procedure Code (CPC) provided as follows:

> 3. **Trial of offences under Penal Code and other laws.**
>
> All offences under the Penal Code shall be inquired into and tried according to the provisions hereinafter contained, and all offences under any other law shall be inquired into and tried according to the same provisions: subject however to any written law for the time being in force regulating the manner or place of inquiring into or trying such offences.

Pursuant to s. 9(b) and the provisions under chapter XVII of the CPC, the Magistrate, Sungei Petani held an inquiry into an offence alleged to be committed by the accused on 16 September 1992, with a view to committal for trial by the High Court. After taking all the evidence for the prosecution, the Magistrate framed a charge, on 24 April 1994, against the accused for an offence under s. 302 of the Penal Code read together with s. 34 of the same Code. Upon the charge being read and explained to him by the Magistrate, and the accused electing to reserve his defence, the Magistrate forthwith committed the accused for trial before the High Court, Alor Setar as required under s. 142(1) of the CPC. It is to be observed that had the accused elected to make his defence before the Magistrate, the Magistrate had the power, under s. 143 of the CPC, to discharge the accused, if he finds there are insufficient grounds for committing him for trial in the High Court.

On 6 July 1994, the Magistrate forwarded the record of the proceedings to the Deputy Registrar, High Court, Alor Setar, as well as the Deputy Public Prosecutor, Alor Setar, as required under s. 147 of the CPC. The record was received by the Deputy Registrar on 14 Julai 1994. Under s. 252 of the CPC a person committed for trial shall be tried in the High Court, as soon as practicable.

On 6 April 1995, the trial dates of the accused were fixed as follows:

May - 24, 25, 27 - 30,

June - 4 - 8, 10 - 15,

The notice of hearing was sent out to all parties concerned.

At the time of the accused's committal for trial, and at the time the record referred to in s. 147(1) of the CPC was received by the Deputy Registrar of the High Court, Alor Setar, the manner of trying the offence which the accused was alleged to have committed was set out in chapter XXII of the CPC under the cross-heading "Of Trials by Jury Before The High Court". However, before the accused ever appeared or was brought before the High Court, the Criminal Procedure Code (Amendment) Act 1995 came into force with effect from 17 February 1995. The Criminal Procedur Code (Amendment) Act, 1995 (hereinafter referred to as "the Amendment Act") repealed, *inter alia*, chapter XXI, chapter XXII and chapter XXIII under the crossing heading "Of trials before the High Court with the aid of assessors", "Of trials by jury before the High Court", and "Of jurors and assessors", respectively. The Amendment Act also repealed the words "without assessors" in the cross-heading "Of trials in the High Court without assessors". Thus the Amendment Act has repealed s. 200 of the CPC which provides for the manner of trying cases where the punishment of death is authorised by law, that is, trial by jury, and all the machinery provisions of CPC which enable a "trial by jury" to take place. Therefore, the High Court sat to try the accused as scheduled on 24 May 1995, without a jury. However, this prompted Mr. Karpal Singh, Counsel for the accused, to raise a preliminary objection that the accused is entitled to a "trial by jury" notwithstanding the coming into operation of the Amendment Act on 17 February 1995.

Mr. Karpal Singh contends as follows to support his objection:

1) That the accused has a substantive right to a trial by jury;

2) That the Amendment Act should not be given any retrospective effect; and

3) That there is an ambiguity in s. 39 of the Amendment Act and the "purposive" approach of interpretation should be applied.

I shall deal with the first and second issues raised above, together, and then the third issue, separately, in arriving at my conclusion.

First and second issue

Mr. Karpal Singh's stand is that as the preliminary inquiry was completed by the Magistrate in April 1994 and the accused was committed to stand trial at the High Court well before the Amendment Act came into force in February 1995, the accused has a substantive right to a trial by jury in the High Court. In other words, on the date of the order of commitment, the accused had a vested right to be tried in the High Court with the aid of a jury, and the accused cannot be deprived of the right by any amending Act.

Does the accused have the vested substantive right that he claims, both in fact and in law? The answer is simple. **The accused will have such a right if his case has in fact commenced, or, anything had been done, which could be legally interpreted as amounting to a commencement of his trial in the High Court, before the coming into force of the Amendment Act.**

The trial of the accused in the High Court does not commence with the order of commitment made by the Magistrate in 1994. The trial only commences when the evidence is adduced in

the High Court. In this case, the accused appeared for the first time in the High Court on 24 May 1995, well after the coming into force of the Amendment Act. Therefore, the accused did not have a substantive right to be tried by a jury before the coming into force of the Amendment Act.

It is well settled that unless provided expressly or by necessary implication, no statute is retrospective in its operation, but, a statute which affects procedure only, is retrospective. The Amendment Act, in so far as the accused is concerned, only affects procedure relating to his trial in the High Court. The accused did not have any vested right to a trial by jury prior to the coming into force of the Act. Therefore, the Amendment Act can be made to operate retrospectively. **The accused will not suffer from any injustice or unfairness.**

Third issue

Section 39 of the Amendment Act reads as follows:

> 39(1) Any preliminary inquiry, trial by jury or trial with the aid of assessors that has been commenced before or on the commencement of this Act shall be continued or concluded in all respects as if this Act had not been passed.
>
> (2) For the purpose of subsection (1), any preliminary inquiry or trial has been commenced when the accused has appeared before or has been brought before the Magistrate's Court or the High Court as the case may be, and evidence has begun to be adduced in the inquiry or trial.

Mr. Karpal Singh submits that there is an ambiguity as the Amendment Act has not made any provision in respect of any preliminary inquiry which has been concluded before the commencement of the Amendment Act. With respect to Mr. Karpal Singh, I am of the view the intention of Parliament in enacting the Amendment Act is very clear, that is:

i) any preliminary inquiry,

ii) any trial by jury, and

iii) any trial with the aid of assessors, should be abolished with effect from the date the Amendment Act came into force. Nevertheless, s. 39 was obviously enacted to ensure that any substantive right to:

i) a preliminary inquiry,

ii) a trial by jury, or

iii) a trial with the aid of assessors, "enjoyed" by any person before the coming into force of the Amendment Act, would not be affected.

The words used in s. 39 are precise and unambigious. When the words of an Act of Parliament are clear, there is no room for applying the principles of interpretation which are merely presumptions in cases of ambiguity. Therefore, I must decline Mr. Karpal Singh's suggestion to use the "purposive" approach to interpret s. 39 and rule that it must have been the intention of Parliament to allow an accused a jury trial where a preliminary inquiry had been completed before the commencement of the Amendment Act. A jury trial shall not be held, even in cases where a preliminary inquiry is continued or concluded, pursuant to s. 39(1) of the Amendment Act.

Conclusion

I dismiss the preliminary objection raised by the learned defence Counsel and direct that the trial of the accused proceed in accordance with the procedure under chapter XX of the Criminal Procedure Code, as amended by the Criminal Procedure (Amendment) Act 1995.